

AP 3435 Discrimination and Harassment Complaints and Investigations

References:

Title VII of the Civil Rights Act of 1964; 42 U.S. Code Sections 2000e et seq.;
Title IX, Education Amendments of 1972; 20 U.S. Code Sections 1681 et seq.;
34 Code of Federal Regulations Part 106.8;
Equal Employment Opportunity Commission (EEOC) Notice 915.002 (dated June 18, 1999)
Standard of Student Conduct (AP 5500)
Prohibition of Harassment (AP 3430)

Rescinds Policy No. 1.001P

Complaints: Any person who has suffered harassment, discrimination, or retaliation may file a complaint of harassment, discrimination, or retaliation. Complainants are encouraged to report harassment before it becomes severe or pervasive. The College strives to stop harassment before it rises to the level of a violation of federal law.

Retaliation: Persons who make complaints of harassment or provide information related to such complaints will be protected against retaliation. The College will take all reasonable steps to protect the complainant from further harassment or discrimination.

Employment-Related Complaints: If the Formal Complaint does not meet the requirements set forth above, the Affirmative Action Officer will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Affirmative Action Officer will handle the matter as an informal complaint.

The Affirmative Action Officer is the person charged with receiving complaints of discrimination or harassment, and coordinating their investigation. The actual investigation of complaints may be assigned by the Affirmative Action Officer to other College staff or to outside persons or organizations under contract with the College. At a minimum, the investigation will be assigned to other College staff or outside investigators whenever the Affirmative Action Officer is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any student, employee, or third party who believes he/she has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint: An employee who believes he/she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing.

A complainant may file a complaint against the College with any of the following:

- the Affirmative Action Officer; or
- the Dean of Students, Director of Human Resources or the President.

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Oregon Civil Rights Division.

Any College employee who receives a harassment or discrimination complaint shall notify the Affirmative Action Officer immediately.

Filing a Timely Complaint: Since failure to report harassment and discrimination impedes the College's ability to stop the behavior, the College strongly encourages anyone who believes they are being harassed or discriminated against to file a complaint. The College also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the College's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The College will investigate complaints involving acts that occur off campus if they are related to an academic or work activity.

Communicating that the Conduct is Unwelcome: The College further encourages, but does not require, students and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Affirmative Action Officer shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work or academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise the complainant that he/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the

informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.

- Advise student complainants that they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee complainants they may file a complaint with the Oregon Civil Rights Division or the Equal Employment Opportunity Commission (EEOC). All complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The College must investigate even if the complainant files a complaint with local law enforcement. In addition, the College should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services.
- Take interim steps to protect a complainant from coming into contact with the alleged perpetrator, especially if the complainant is a victim of sexual violence. The Affirmative Action Officer/HR Director should notify the complainant of his/her options to avoid contact with the alleged perpetrator. For instance, the College may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, the College shall minimize the burden on the complainant.

Investigation of the Complaint: The College shall conduct a prompt, thorough, and impartial investigation into every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the College, whether those programs take place in the College's facilities, or at a class or training program sponsored by the College at another location.

The College will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the College may weigh the request for confidentiality against the seriousness of the alleged harassment, the complainant's age, whether there have been other harassment complaints about the same individual, and the alleged perpetrator's rights to receive information about the allegations if the information is maintained by the College as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The College will inform the complainant if it cannot maintain confidentiality.

Investigation Steps: The College will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including

sexual violence, and that they understand how the College's grievance procedures operate. The investigator cannot have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the College's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the College evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the College will decide whether it is more likely than not that discrimination or harassment has occurred.

If there are conflicting versions of relevant events, the College's investigator will weigh each party's credibility. Factors that will be considered in determining credibility include: inherent plausibility; demeanor; motive to falsify; corroboration; and past record.

Timeline for Completion: The College will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 20 working days of the College receiving the complaint.

Cooperation Encouraged: All employees will cooperate with a College investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the College to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the College of its obligation to investigate. The College will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

Written Report: The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the complaint;
- A summary of the testimony provided by each witness interviewed by the investigator;
- An analysis of relevant evidence collected during the course of the investigation;

- A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
- Any other information deemed appropriate by the College.

Reaching a Determination: Once the Affirmative Action Officer receives the investigative report, he/she, will make a determination as to whether harassment or discrimination occurred.

Discipline and Corrective Action

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, the College shall take disciplinary action against the alleged perpetrator and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the conduct. Remedies for the complainant might include, but are not limited to:

- providing an escort for the complainant between the parking lot and his/her workplace or classroom office;
- ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing medical services or a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.

If the College imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the College may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the

sanction directly relates to the complainant; for example, the College may inform the complainant that the harasser must stay away from the complainant.

In the case of a crime of violence or a non-forcible sex offense, and the alleged perpetrator is a student, the final results of any disciplinary proceeding conducted by the College against the alleged perpetrator may be disclosed to the complainant, if the College determines as a result of the disciplinary proceedings, the student violated the College's rules or policies. The final results of any disciplinary proceeding include only the name of the student, the violation committed, and any sanction imposed by the institution on that student.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of Full and Part Time Faculty Bargaining Agreements and Classified Employee Agreement.

The College will ensure that complainants and witnesses know how to report any subsequent problems, and Affirmative Action Officer should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

If the College cannot take disciplinary action against the accused individual because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If the College imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, he/she may, within 15 days, submit a written appeal to the Board of Education (the Board). The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final College decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant. The complainant shall also be notified of his/her right to appeal this decision.

File Retention

The College will retain on file for a period of at least 50 years after closing the case copies of:

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;

- the notice provided to the complainant, of the College's administrative determination and his/her right to appeal;
- any appeal; and
- the College's final decision.

Approved: September 11, 2018
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President's Cabinet Adoption Date: _____
College Council Adoption Date: _____